

BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

Joint Application of :
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 :
 UNITED AIR LINES, INC., :
 US AIRWAYS, INC., :
 and : Docket OST-00-8355
 ALLEGHENY AIRLINES, INC. :
 :
 :
 for approval of a transfer of certificate authority :
 under 49 U.S.C. § 41105 :
 :

Joint Application of :
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 UNITED AIR LINES, INC., :
 US AIRWAYS, INC., :
 and : Docket OST-00-8356
 ALLEGHENY AIRLINES, INC. :
 :
 :
 for an exemption pursuant to 49 U.S.C. § 40109 :
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ANSWER OF
CONTINENTAL AIRLINES, INC.

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December 8, 2000

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United,¹ often described as a 900-pound gorilla at the time airlines were being deregulated, has now become a two-ton gorilla and is applying jointly with US Airways and Allegheny to transfer international routes as part of a transaction in which the combined United will become a three-ton gorilla. Although the primary responsibility for evaluating domestic airline mergers now rests with the

¹ Common names are used for airlines.

Department of Justice, which is continuing to review the proposed United/US Airways merger, Congress has nonetheless insisted that the Secretary certify, as part of any route transfer approval, that the transfer is “consistent with the public interest” based on an analysis of the effects of the transfer on, among other things, “competition in the domestic airline industry.” The Department should not take this responsibility lightly, as the joint applicants suggest, since the Congressional directive reflects serious Congressional concerns.

Continental urges the Department to conclude that the proposed international route transfer will have an adverse impact on competition in the domestic airline industry and should be disapproved, at least until significant steps have been taken to ameliorate the serious adverse impacts on competition flowing from the proposed transaction.

Continental states as follows in support of its position:

1. Continental knows what competing with United, already a far larger carrier, on its home field is like: Continental was United’s primary competitor at Denver prior to Continental’s second bankruptcy. Absent forceful action by the Department of Justice and this Department, the entire eastern United States could become the combined United’s home field. The question is not whether the combined United will be stronger or have a broader network to offer passengers and shippers. It certainly will. The question is whether, absent regulatory action, the combined United will be so overwhelmingly competitive, and have such an unmatched network, that other airlines will be forced to the sidelines or

eliminated altogether. Transfers of international routes from US Airways and Allegheny to United will only strengthen further the combined carrier's predominance at its eastern hubs: Philadelphia, Charlotte, Pittsburgh, Chicago and – most importantly – Washington. Although the combined carrier will have five eastern hubs, no other carrier will have more than two eastern hubs.² Moreover, the combined carrier would be more than twice the size of the next largest airline, American, putting far smaller airlines such as Continental at risk without additional opportunities to compete with United. Even more importantly, the travelling and shipping public will be placed at risk for the higher fares and poorer service that market power throughout an entire region can bring.

2. The joint applicants have recognized that their market power over Washington service, given the United strength at Dulles and the US Airways strength at Reagan, requires new competition in Washington. Their proposal for a small regional airline limited to US Airways routes and dependent upon United for aircraft and personnel would not bring any significant competition to Washington and certainly could never provide the network competition necessary to compete with a combined United/US Airways. Continental is the only airline which has stepped forward publicly to propose a solution which would substantially ameliorate the adverse effects of a combination between United, US Airways, Allegheny and

² Continental has eastern hubs at New York/Newark and Cleveland, Delta has eastern hubs at Atlanta and Cincinnati and American has eastern hubs at Chicago and Miami.

other US Airways commuters in the eastern United States. Continental has offered to acquire the assets United and US Airways have proposed to spin off into DCAir for \$215 million in cash, 50% more than the \$141 million price offered to DCAir. With these assets and sufficient additional slots, gates and other facilities at Washington Reagan in hand, Continental would operate a hub at Washington Reagan providing effective competition for the combined United's Washington service. By tying Continental's existing network of hubs together with the new Washington Reagan hub, Continental would be able to provide the network service essential to effective competition at Washington and throughout the eastern United States. In addition to Continental's provision of regional and longer-haul nonstop service at Washington Reagan, Continental's hubs at New York/Newark, Cleveland and Houston will enable it to offer passengers using Washington Reagan comprehensive nationwide access which neither DC Air nor any smaller competitor could offer. In addition, Continental's codesharing with Northwest will enable it to offer Washington passengers service via Northwest's Detroit, Memphis and Minneapolis/St. Paul hubs. Finally, Continental will be able to offer international connections between its new Washington Reagan hub and points throughout the world through its primary international hubs at New York/Newark and Houston and Northwest's primary international hubs at Detroit and Minneapolis/St. Paul. At the same time, strengthening Continental, one of the smaller major airlines, will enable Continental to compete more effectively with the combined United nationwide and throughout the world. As the applicants note, many of the routes

being transferred are limited-entry routes, raising the very real question whether such routes should be transferred to a combined United to strengthen it even further or transferred to other carriers to enable them to provide at least a modicum of competition to the combined United and its Star Alliance partners.³ With hubs at New York/Newark and Washington Reagan, Continental will bracket the combined United hub at Philadelphia, enabling Continental to attract Philadelphia passengers to its adjacent hubs in competition with United at Philadelphia. Adding the Washington Reagan hub to Continental's network will also strengthen its hub at Cleveland, enabling it to compete more effectively with the combined United hub at Pittsburgh for connecting traffic. Absent robust competition by Continental, however, the combined United and US Airways could drive others from its territory and become even more entrenched in Washington.

3. Although the joint applicants suggest that the Department should rely on the Department of Justice to analyze the effect of the proposed route transfer on domestic competition, Congress has directed the Department to conduct its own

³ United is not only the world's largest airline itself, it also participates in the world's largest alliance: the Star Alliance. Thus, route transfers which further enhance the massive United international network will strengthen the dominance of United and the Star Alliance even further, making enhanced competition by international airlines such as Continental and its partners for international traffic critical to any approval of international route transfers from US Airways and Allegheny to United.

analysis.⁴ In fact, Congressional interest in this merger and its impact on domestic competition is running particularly high (see, e.g., S. Res. 344, which has passed the Committee on Commerce, Science and Transportation), and review of the international route transfers now may be putting the cart before the horse since the Department of Justice is still reviewing whether the merger should be permitted at all. Moreover, the Department has recognized that its analysis extends to the transfer of gates and other assets relative to the impact of route transfers on domestic competition. (See Order 95-3-19 at 6-8) In this instance, the Department is considering transfer of international routes which US Airways has used to provide nonstop service competitive with United and its Star Alliance partner, Air Canada, between Washington Reagan and Toronto as well as connecting service between Washington National and points throughout Europe, the Caribbean and Canada competing with United and its Star Alliance partners. Absent development of an effective hub at Washington Reagan by Continental, this competition will all be lost. Thus, the proposed transaction would have an extraordinarily adverse

⁴ Any Department of Justice decision permitting the combination of United and US Airways and their affiliates without at the very least insisting upon the introduction of genuine competition in Washington and throughout the eastern United States replicating at least the competition for United previously provided by US Airways, would be completely at odds with the Department of Justice's prior decisions on airline mergers. Nonetheless, this Department must also make its own judgment about the impact of the route transfers and related transactions on domestic competition.

impact on both domestic and international competition unless substantial new network competition is created at Washington Reagan.

For the foregoing reasons, Continental urges the Department to disapprove the proposed transfer of routes from US Airways and Allegheny to United unless and until the Department is satisfied that effective competition can be ensured by development of a new hub at Washington Reagan by Continental.

Respectfully submitted,

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December 8, 2000

CERTIFICATE OF SERVICE

I certify that I have this date served a copy of the foregoing document on counsel for United, US Airways and Allegheny and all persons served with their Joint Application in accordance with the Department's Rules of Practice.

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December 8, 2000

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